UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MOUNTAIRE FARMS OF DELAWARE, INC.

and Case 5–CA–31336

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 27, AFL–CIO

James C. Panousos, Esq., for the General Counsel.
Linda D. McKeegan, Esq., of Baltimore, MD,
for the Charging Party.
Arthur M. Brewer, Esq., of Baltimore, MD,
for the Respondent.

DECISION

Statement of the Case

Richard A. Scully, Administrative Law Judge. Upon a charge filed on July 8, 2003, by United Food and Commercial Workers Union, Local 27, AFL-CIO (the Union), the Regional Director, Region 5, National Labor Relations Board (the Board), issued a complaint on September 24, 2003, alleging that Mountaire Farms of Delaware, Inc. (the Respondent), had committed certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held on January 23, 2004, in Seaford, Delaware, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

Findings of Fact

I. The Business of the Respondent

At all times material, the Respondent was a Delaware corporation with an office and place of business in Millsboro, Delaware, engaged in the business of processing poultry products. During the 12-month period preceding September 24, 2003, in conducting its business operations, the Respondent purchased and received at its Millsboro, Delaware facility, goods and supplies valued in excess of $50,000 directly from points outside the State of Delaware. The Respondent admits, and I find, that at all times material it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Labor Organization Involved

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

The Respondent operates 2 poultry processing plants and a feed mill in Southern Delaware. The Millsboro poultry processing plant is the only facility involved here. The Millsboro plant employs approximately 1,700 employees, most of whom speak either English, Spanish, or French/Creole as their first language. Walter Moorhead, is the Director of Processing Operations at the Millsboro plant. Among his overall responsibilities are the processing operations, human resources, engineering, and maintenance at the plant. On or about June 20, 2003, identical letters, written in English, Spanish, and French/Creole, signed by Moorhead, were sent to each employee of the Millsboro plant.[1] Moorhead testified that copies were mailed to every employee. Mainor De Leon, a former employee, credibly testified that copies of the 3 letters were given to him at his work station by his supervisor along with his pay check and that copies of each were posted on a bulletin board near the bathrooms at the plant.[2]

The letters say that the Union has been trying to organize employees at the Respondent's feed mill and at a Perdue plant in Georgetown, Delaware, and that employees of the Millsboro plant might be contacted by agents of the Union who "will try to get you to sign a union card." There is no evidence that the Union had begun an organizing effort at the Millsboro plant at the time the letters were disseminated.

The complaint alleges that the letters, particularly, statements contained therein that signing a union card "can cost you your freedom" and "you could face serious consequences as the result of signing a union card," were threatening and coercive and violated Section 8(a)(1) of the Act. The Respondent contends that the statements in the letters were legitimate expressions of its position regarding the possible impact of unionization on its employees at the Millsboro plant and are protected by Section 8(c) of the Act.

Analysis and Conclusions

Under Section 8(c) of the Act, an employer is free to express its opposition to unionization to its employees so long as the communication does not contain a "threat of reprisal, or force, or a promise of benefit." In deciding whether an employer's statement tends to interfere with the free exercise of employee rights, the Board applies an objective standard and does not consider either the motivation behind the statement or its actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001). Whether a statement has a reasonable tendency to interfere with protected rights must be considered in light of all of the surrounding circumstances. *F.W. Woolworth Co.*, 310 NLRB 1197, 1204 (1993).

There is clearly no promise of any benefit in the letters. I conclude that the individual

[1] The text of the letter written in English is attached hereto as Appendix A.

[2] Moorhead stated that copies of the letters were sent to employees by mail only and were not posted or distributed at the plant. I find it likely that he was simply unaware that they were posted and distributed in the plant. In any event, there is no dispute but that they were intended to be delivered to and read by all employees, regardless of the method of dissemination.

statements cited by the General Counsel, alone or taken together, cannot be reasonably be said to contain a threat of reprisal. The statement that signing a union card "can cost you your freedom" is another way of saying that selecting a union as their collective-bargaining representative could change the relationship between the employees and their employer and could place restrictions on the way they can communicate with management.[3] "Section 9(a) contemplates a change in the manner in which employer and employee deal with each other, and an employer's reference to this change cannot be characterized as a retaliatory threat to deprive employees of their rights." *Office Depot*, 330 NLRB 640, 642 (2000); *Tri-Cast, Inc.*, 274 NLRB 377 (1985).

Similarly, I conclude that the statement, "you could face serious consequences as the result of signing a union card," does not threaten retaliation by the Employer. The above-mentioned change in the relationship between employees and employer that can result from union representation, in and of itself, may reasonably be said to be a "serious consequence." There is nothing sinister or ominous in pointing this out.

I find that the General Counsel's reliance on the Board's decision in *Greensboro Hosiery Mills, Inc.*, 162 NLRB 1275 (1967), is misplaced.[4] In the circumstances of that case, the Board concluded that the Employer violated Section 8(a)(1) by posting a large notice to employees stating that if a union organizing effort were successful, "it would not work to your benefit but, in the long run, would itself operate to your serious harm." There was a union organizing campaign underway at the Employer's plant and, in addition to posting the notice, it "took concrete steps through its supervisors to assure that the coercive effect of the notice was not lost on its employees." These steps included a supervisor's calling an employee into a manager's office, reading him the notice, and commenting "that unions often cause 'trouble, strife and discord.'" The employee was also interrogated about his union activities and told that the Union would not get a contract. Other employees were also subjected to "the Employer's campaign of coercion." The Board concluded that the notice was unlawful when considered in the context of a union organizing campaign accompanied by other unfair labor practices committed by the Employer. However, it did so after noting (p.1276):

> We have not ordinarily found such notices to be illegal in and of themselves, for the bare words, in the absence of conduct or other circumstances supplying a particular connotation, can be given a noncoercive and nonthreatening meaning. Even the simultaneous existence of other unfair labor practices may not render the notice coercive, unless these practices tend to impart a coercive overtone to the notice. Where we have noted that other unfair labor practices have been found, our decisions have been bottomed on the premise that there is a direct relationship between the notice and the total context in which it has appeared, including unfair labor practices, which serves to give a "sinister meaning" to what might otherwise be viewed as innocuous or ambiguous words. (Footnote omitted.)

In *Ohmite Manufacturing Co.*,[5] during a union organizing campaign, the Employer sent and posted a letter to its employees which expressed its belief that "if this union were to get in here it would not work to your benefit but to your serious harm." The Board found that the letter was

[3] The General Counsel does not contend and I find that no one could reasonably conclude that the statement implies that signing a union authorization card could lead to incarceration.

[4] Other cases cited by the General Counsel, *Long Island College Hospital*, 327 NLRB 944 (1999) and *Pacific Design Center*, 339 NLRB No. 57 (2003), are distinguishable.

[5] 217 NLRB 435 (1975).

not inherently coercive and did not constitute a threat of retaliation. It held that the letter did not violate Section 8(a)(1) where there was no relationship between the letter and a subsequent unfair labor practice committed by the Employer.

In the instant case, the record contains no evidence that an organizing campaign had begun or was contemplated at the Respondent's Millsboro plant. There is only the statement in the letters that the Union was seeking to organize the Respondent's feedlot and a Perdue plant in the area. More important, there is no evidence, or even any allegation, that the Respondent had committed any other unfair labor practices, let alone, unfair labor practices which had a direct relationship to the letters and served to give them a "sinister meaning." Moreover, the term "serious consequences" in the Respondent's letters is much more ambiguous and innocuous than the term "serious harm" used in the communications in *Greensboro Hosiery Mills, Inc.* and *Ohmite Manufacturing Co.* Considering all the circumstances here, I find that the letters the Respondent disseminated to its employees on or about June 20, 2003, did not threaten them with retaliation and did not violate Section 8(a)(1) of the Act. Accordingly, I shall recommend that the complaint be dismissed.

Conclusions of Law

1. The Respondent, Mountaire Farms of Delaware, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not commit the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[6]

The complaint is dismissed.

Dated Washington, D.C., March 15, 2004

Richard A. Scully
Administrative Law Judge

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX A

PREMIUM

Mountaire

Fresh Young Chicken

June 20, 2003

Dear Fellow Employees:

Recently, agents of Local 27 UFCW have been trying to organize the employees who work at the Company's Feedmill in Frankford, Delaware. They are also trying to organize some employees Who work at Perdue's Georgetown facility. They may try here next.

Agents of the union may call you or visit you at your home. They will try to get you to sign a union Card. Don't let them pressure into making a big mistake that can cost you your freedom and a lot of your hard earned money.

Mountaire wants you to know that:

You have the right to tell the union agents to leave you alone.

You do not have to sign a union card – it could cost you a lot of money.

You could face serious consequences as the result of signing a union card.

Unions can promise you anything, but because they do not pay your wages or benefits, they have no power to make those promises come true.

Agents of the union may tell you that they will take you out "on strike" to get what you want. Don't believe them! Here is what Selbyville's union contract says about "strikes" in Article 12:

1. *"Strikes, stoppages, slowdowns, or any form of interference with work, and lockouts are prohibited during the term of this Agreement."*

2. *"Violation of this Article by any employee shall be considered just cause for his or her discharge."*

Even their own rules say that you can lose your job for participating in an illegal strike. Ask them if they will pay your bills if you are on strike or lose your job.

Ask yourself – Why should I sign a union card to pay over $260.00 a year in union dues and possibly get less pay and less benefits than I have now? Now is the time to tell these union agents, who want only your money, to go away and not to come back! Don't give up your right to speak for yourself.

Sincerely,

/s/

Walter Moorhead
Director of Processing Operations